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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 RAOHL HURSH,

13 Plaintiff,

14 vs.

15 COUNTY OF SAN DIEGO, et al,

16 Defendants.

CASE NO. 08cv2249 BEN (PCL)

**ORDER DENYING MOTION TO
AMEND**

17 Plaintiff Raohl Hursh has filed a motion for leave to file a Second Amended Complaint adding
18 new defendants. (Dkt. No. 49.) Defendant opposes the motion, emphasizing the May 14, 2010
19 deadline to amend the pleadings and the absence of any showing of good cause for the significant
20 delay in bringing the motion. (Dkt. No. 51.) Plaintiff filed no Reply. For the reasons outlined below,
21 Plaintiff's motion to amend is **DENIED**.

22 **BACKGROUND**

23 Plaintiff brought this action under 42 U.S.C. § 1983 for Defendant County of San Diego's
24 failure to assign him to a lower bunk and denial of adequate medical care. Plaintiff named and served
25 the County, but only identified other possible "Doe Defendants." Plaintiff now seeks to add an
26 additional ten named Defendants and another ten as yet unidentified Doe Defendants.

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1 The deadline to add parties was May 14, 2010. (Court's April 13, 2010 Case Management
 2 Conference Order Regulating Discovery and Other Pretrial Proceedings.)¹ The County filed its motion
 3 for summary judgment on January 10, 2011. Defendant's motion for summary judgment was fully
 4 briefed on February 7, 2011. When Plaintiff filed his motion to amend two weeks later, on February
 5 21, 2011, the Final Pretrial Conference was set for March 14, 2011. The Final Pretrial Conference was
 6 continued, in part, because of the instant motion.

7 DISCUSSION

8 Plaintiff moves to amend pursuant to Federal Rule of Civil Procedure 15. Under Rule 15, [t]he
 9 court should freely give leave to amend when justice so requires." Whether "justice so requires"
 10 depends on "the presence or absence of undue delay, bad faith, dilatory motive, undue prejudice to the
 11 opposing party, and futility of the proposed amendment." *Moore v. Kayport Package Express, Inc.*,
 12 885 F.2d 531, 538 (9th Cir. 1989).

13 But, when a plaintiff seeks to amend after the time specified in a scheduling order, Federal
 14 Rule of Civil Procedure 16 applies and a plaintiff "must show good cause for not having amended .
 15 . . before the time specified in the scheduling order expired." *Coleman v. Quaker Oats Co.*, 232 F.3d
 16 1271, 1294 (9th Cir. 2000). This higher standard "primarily considers the diligence of the party
 17 seeking the amendment." *Id.* Plaintiff's request is subject to this standard because the request was
 18 made nine months after the May 14, 2010 deadline set by this Court.

19 Plaintiff has not demonstrated his diligence or shown good cause for not having amended
 20 before the May 14, 2010 deadline. The substance of Plaintiff's motion consists of only two
 21 paragraphs.² In the first, he quotes Rule 15. In the second he indicates that depositions of sheriffs
 22 deputies were necessary to determine the proper parties to be included and those depositions were not
 23 taken until December 9-10, 2010. Plaintiff does not explain why those depositions, critical to
 24 identifying proper defendants, were not taken until six months after the deadline for amending the
 25 pleadings and more than two years after this litigation began. Plaintiff does not explain why he did

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 27 ¹On November 16, 2010, six months after the deadline to amend the pleadings had passed, the
 28 Court reset the remaining deadlines. (Court's November 16, 2010 Amended Case Management
 Conference Order Regulating Discovery and Other Pretrial Proceedings.)

²Plaintiff did not file a Reply brief.

1 not seek amendment of the scheduling order to accommodate this problem. And finally, Plaintiff does
2 not explain the two-month delay from the time of those depositions and the filing of the instant
3 motion.

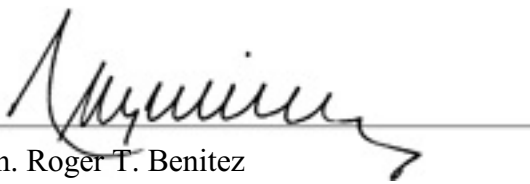
4 Although Rule 16, rather than Rule 15, applies because “a pretrial scheduling order . . .
5 established a timetable for amending the pleadings, and the deadline . . . expired before [Plaintiff]
6 moved to amend,” *Coleman*, 232 F.3d at 1294, Plaintiff is also not entitled to amend under Rule 15
7 because granting his request at this late stage in the litigation would cause significant undue delay and
8 undue prejudice to Defendant. *See Moore*, 885 F.2d at 538. As outlined above, Plaintiff has engaged
9 in significant undue delay in requesting leave to amend. Additionally, the Court notes that Plaintiff
10 filed this case more than two years ago and only now seeks to add an additional ten defendants.
11 Plaintiff’s delay would also cause undue prejudice to the opposing party. Plaintiff waited to file his
12 motion to amend until after Defendant’s motion for summary judgment was filed and fully briefed and
13 only a month before the Final Pretrial Conference. While Rule 16’s good cause standard applies, even
14 if the Court applies Rule 15’s more liberal standard, Plaintiff is still not entitled to amend at this late
15 stage in the litigation.

16 CONCLUSION

17 Plaintiff’s motion for leave to amend is **DENIED**. The March 28, 2011 hearing date is
18 vacated.

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20 **IT IS SO ORDERED.**

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22 DATED: March 24, 2011

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25 Hon. Roger T. Benitez
26 United States District Judge
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